

STATE OF TENNESSEE

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Opinion No. 04-145

Authority to Suspend a Professional Bondsman

QUESTIONS

1. Does a general sessions court have the authority to suspend a professional bondsman from making bonds for cases originating from that court?
2. Does a circuit court have the power to enact a local rule prohibiting a general sessions court from suspending a bondsman?

OPINIONS

1. Yes. Tenn. Code Ann. § 40-11-125(a) gives *any* court the authority to withhold, withdraw, or suspend the approval of a professional bondsman for misconduct specified in the statute.
2. No. Only the Tennessee Supreme Court can make rules governing the procedure in other courts.

ANALYSIS

1. Courts have statutory, as well as inherent, authority to regulate bail bondsmen who operate in their courts. Tenn. Code Ann. § 40-11-125(a) provides:

In addition to the requirements of part 3 of this chapter regulating professional bondsmen, approval of a professional bondsman or other surety may be withheld, withdrawn, or suspended by any court, if after investigation, it appears that a bondsman:

- (1) Has been guilty of violating any of the laws of this state relating to bail bonds;
- (2) Has a final judgment of forfeiture entered against such bondsman which remains unsatisfied; or
- (3) Is guilty of professional misconduct as described in § 40-11-126.

The subsequent subsections of the statute set out the procedure to be followed in suspending a bondsman.

In addition, courts have the inherent power to make reasonable rules for the regulation of the bail bond business. “A trial court has full authority to determine who should be allowed to make bonds in its courts.” *Hull v. State*, 543 S.W.2d 611, 612 (Tenn. Crim. App. 1976) (citing *Gilbreath v. Ferguson*, 195 Tenn. 528, 260 S.W.2d 276 (1953)). The fact that the legislature has enacted certain statutes concerning the regulation of bail bondsmen does nothing to diminish the trial court’s inherent powers to act in addition to the statutes. In *Taylor v. Waddey*, 206 Tenn. 497, 334 S.W.2d 733 (1960), the Tennessee Supreme Court recognized the right of a general sessions court to “see that the courts over which they preside are conducted in an honest and upright manner,” including the right to suspend a bondsman. *Id.* at 736. Therefore, “the trial court is given wide discretion in its regulation of bail bondsmen and its action will not be overturned absent a showing that they were arbitrary, capricious or illegal.” *In re International Fid. Ins. Co.*, 989 S.W.2d 726, 728 (Tenn. Crim. App. 1998).

2. Tenn. Code Ann. § 16-3-402 recognizes the authority of the Supreme Court to prescribe rules governing the practice and procedure in all inferior courts of this state. The rulemaking authority of all other courts is limited to “additional or supplemental rules of practice and procedure not inconsistent with or in conflict with the rules prescribed by the Supreme Court.” Tenn. Code Ann. § 16-3-407. In *State v. Best*, 614 S.W.2d 791, 793 (Tenn. 1981), the Court found that it is “clearly implicit in the statutes, Tenn. Code Ann. §§ 16-3-401 [to] 16-3-407, that no court other than the Supreme Court can make rules governing the procedure in other courts.” Therefore, it is the opinion of this office that a circuit court cannot make rules that govern procedure in a general sessions court, including rules concerning the suspension of a bondsman’s authority to make bonds in the general sessions court. Moreover, such a rule would contradict the plain language of Tenn. Code Ann. § 40-11-125(a), which expressly authorizes “any court” to suspend a bondman’s authority to make bonds in that court when the statutory conditions for such action are present.

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